

STATE OF NEW MEXICO
NEW MEXICO ENVIRONMENT DEPARTMENT

IN THE MATTER OF
HELENA CHEMICAL COMPANY,

No. AQCA 08- 27 (CO)

Respondent.

**COMPLIANCE ORDER REQUIRING COMPLIANCE
AND ASSESSING A CIVIL PENALTY**

The New Mexico Environment Department (Department) issues this Compliance Order, pursuant to the Air Quality Control Act (AQCA), NMSA 1978, § 74-2-12 (1992), to Helena Chemical Company (Helena) to assess a civil penalty for violations of the AQCA and Air Quality Control Regulations (AQCR), 20.2.1 NMAC, and Helena's Air Quality Permit No. 3035-M1 (Permit). The Secretary of the Department (Secretary) has delegated the authority to issue this Compliance Order to the Director of the Department's Environmental Protection Division.

FINDINGS OF FACT

1. The Department is an executive agency of the State of New Mexico and is authorized to enforce the provisions of the AQCA. NMSA 1978, § 74-2-12.
2. Respondent Helena is a Delaware corporation doing business in New Mexico. Helena is a processor and distributor of agriculture chemicals, including fertilizer, and operates a facility at 252 John Grisham Drive, Mesquite, New Mexico (Facility).
3. The Department issued the Permit to Helena on November 4, 2005 pursuant to the AQCA and AQCR.
4. Enforcement staff from the Department's Air Quality Bureau (Bureau) inspected the Helena Facility on March 30, 2007; April 2, 2007; April 4, 2007; April 5, 2007; April 17,

2007; June 13, 2007; and June 15, 2007.

5. Specific condition 1(g) of the Permit states: "The building shall be enclosed when receiving, handling, processing and/or conveying fertilizer products."

6. During the March 30; April 2, 4, 5, and 17; and June 13 and 15, 2007 inspections, Bureau staff observed that three openings of the building were not enclosed during handling, processing, and conveying operations inside the Facility.

7. Specific condition 1(f) of the Permit states: "Fugitive emissions from truck loading activities shall be mitigated by the use of telescoping chutes or other equivalent method. The chute or other equivalent method shall be kept in good repair at all times."

8. During the April 2 and 4, 2007 inspections, Bureau staff observed on three occasions that the telescoping chute off-loading fertilizer product to trucks was not fully extended, resulting in fugitive emissions.

9. Specific condition 1(k) of the Permit states: "The permittee shall comply with 20.2.19.7.A [NMAC] Best Engineering Practices no later than ninety days after permit issuance for the equipment listed in Table 1.1. The compliance demonstration shall be a report prepared for and signed by a Registered Professional Engineer that evaluates each emission source in light of the requirements of 20.2.19.7.A [NMAC] "

10. Section 20.2.19.7.A NMAC states: "'Best engineering practice' means, with respect to control of fugitive particulate matter emissions, the installation and use of hoods, enclosures, ducts, covers, sprays, or other equipment or measures . . . as necessary to prevent particulate matter from becoming airborne."

11. Helena had prepared a best engineering practices report entitled “Best Engineering Practices Evaluation” (Evaluation), dated February 15, 2006.

12. The Evaluation, p. 8, concluded: “The current operations at the [Helena] Mesquite plant meet the intent of the best engineering practices defined in NMAC 20.2.19.7. This evaluation is contingent upon [Helena] maintaining the following practices: . . . Use of telescoping chutes for truck loading . . . Fully enclosing the building during operations (i.e., keeping building doors shut).”

13. During the inspections, Bureau staff observed openings in the building during handling, processing, and conveying operations inside the Facility and the telescoping chute not being fully extending while off-loading fertilizer product to trucks, resulting in fugitive emissions.

14. Specific condition 1(i) of the Permit states: “The North and South haul roads shall be paved and swept as necessary to achieve control of dust emissions and that the paved roads shall be kept in good repair over the life of the facility.”

15. During the March 30, 2007 inspection, Bureau staff observed a portion of the South haul road covered with gravel and dirt, emitting a cloud of dust.

16. Specific condition 6(a) of the Permit and 20.2.72.213 NMAC require Helena to conduct initial compliance tests of the 11 regulated units except one to determine whether each emissions source is in compliance with applicable regulations and permit conditions. Specific condition 6(b) of the Permit and 20.2.72.213 NMAC require the tests be conducted within 60 days after the unit achieves maximum normal production or 180 days of initial startup if

maximum normal production does not occur within 120 days of source startup.

17. Helena was required to conduct its initial compliance tests by May 2, 2006, at the latest.

18. During the March 30, 2007 inspection, Helena was not able to produce records of any compliance tests performed, and in fact had not performed any compliance tests by that date.

19. General condition 1(a)(v) of the Permit and 20.2.72.21.D NMAC require Helena to notify the Department in writing of any necessary update or correction to the Permit no more than 60 days after Helena knew or should have known of the condition necessitating the update or correction.

20. General condition 2 of the Permit provides that any future physical change or changes in the method of operation may constitute a modification under 20.2.72 NMAC, which states that no modification shall begin prior to issuance of a permit. Under general condition 2, changes in plans, specifications and other representations in the permit application “shall not be made if they cause a change in the method of control emissions or in the character of emissions, or will increase the discharge of emissions. Any such proposed changes shall be submitted as a revision or modification.”

21. Section 20.2.72.200.A(2) NMAC requires any person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a state or national air quality standard and the regulated air contaminant is emitted as a result of the modification to obtain a permit. A “modification” means any physical change in, or change in the method of

operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted” 20.2.72.7.P NMAC.

22. During the March 30, 2007 inspection, Bureau staff observed a new 25-ton mixing tank with two 5-ton dry material hoppers and two auger conveyors. The new equipment was in the process of being installed. During the April 17, 2007 inspection, Bureau staff observed that workers were installing a new electrical panel serving the new mixing tank, hoppers and conveyors.

23. The new equipment observed during the two inspections was not listed in the Permit in Table 1-1, the Regulated Equipment List.

24. The new equipment observed would have resulted in a change in the character of emissions and/or an increase in the discharge of emissions.

25. The new equipment would have resulted in an increase in the potential emission rate of a regulated air contaminant emitted by Helena.

26. By the dates of the inspections, Helena had not notified the Department in writing of the new equipment or applied for a modification of the Permit for the new equipment.

27. Specific condition 3(b) of the Permit requires Helena to continuously monitor the differential pressure in inches of water across the dust collection system (DC-01) and record differential pressure each day the system is operated.

28. During the March 30 and April 2 and 4, 2007 inspections, there was no differential gauge on the dust collection system. While the plant manager stated that the

differential gauge was down for maintenance, there is evidence that the gauge was not in use.

29. Specific condition 4(f) of the Permit requires Helena to generate and maintain records relating to specific condition 3(a) – (d), which includes the requirement in specific condition 3(b) for continuous monitoring of the differential pressure in inches of water across the dust collection system.

30. On April 2, 2007, Helena provided Bureau staff with certain forms, entitled “Daily Dust Collection Working Inspection,” but the forms did not record the differential pressure readings. On April 5, 2007, Helena provided Bureau staff with additional forms entitled “Dust Collector Lubrication and Maintenance Records,” which did not record the differential pressure from November 5, 2005 through April 3, 2007.

31. Specific condition 3(a) of the Permit requires Helena on “an as needed basis but no less frequent than the end of each calendar quarter [to] conduct a visual inspection of all enclosures including the building equipment and abatement equipment to ensure they are kept in good repair and adequately serving their intended function.”

32. Specific condition 4(f) of the Permit requires Helena to generate and maintain records relating to specific condition 3(a) – (d), which includes the requirement in specific condition 3(a) to conduct visual inspections of all enclosures at least each quarter.

33. During the course of the record review during the March 30 and April 2 and 4, 2007 inspections, Helena could not provide Bureau staff with any records of the building enclosures, telescoping chutes, hopper enclosures, elevator enclosures or windscreens. Bureau staff observed that the windscreens at the railcar unloading area were in disrepair.

34. Specific condition 3(c) of the Permit requires Helena to observe visible emissions during normal operations of the 11 process units listed in Table 1.1 of the Permit on a quarterly basis using EPA Reference Method 22. If visible emissions are observed during a six minute period, Helena is required to use EPA Reference Method 9 to determine compliance with specific condition 2(b)(ii), setting a 5% opacity limit on all regulated equipment except one unit.

35. Specific condition 4(f) of the Permit requires Helena to generate and maintain records relating to condition 3(a) – (d), which includes the requirement in condition 3(c) to observe visible emissions of the 11 process units listed in Table 1.1 quarterly.

36. During the inspections, Helena did not provide Bureau staff records of observing visible emissions using EPA Reference Method 22 on the process units during normal operations for any quarter, from December 2005 through March 2007, or of using EPA Reference Method 9 if visible emissions were observed.

37. Specific condition 4(a) of the Permit requires Helena to general and maintain daily and annual production rates for each source of emissions having a limit and hours of operation.

38. During the inspections, Helena did not provide Bureau staff with records of daily or annual production rates for each source having a limit.

CONCLUSIONS OF LAW

39. The Department has jurisdiction over Helena pursuant to the AQCA, NMSA 1978, §§ 74-2-1 to 17.

Violation 1

40. Helena violated specific condition 1(g) of the Permit by not enclosing openings during the handling, processing and conveying of fertilizer products.

Violation 2

41. Helena violated specific condition 1(f) of the Permit, requiring fugitive emissions from truck loading activities to be mitigated by the use of telescoping chutes or other equivalent method, on three occasions by not fully extending the telescopic chute when off-loading fertilizer product.

Violation 3

42. Helena violated specific condition 1(k) of the Permit by not following the best engineering practices in the Evaluation through allowing openings in the building during handling, processing, and conveying operations inside the Facility and through not fully extending the telescoping chute while off-loading fertilizer product to trucks, resulting in fugitive emissions.

Violation 4

43. Helena violated specific condition 1(i) of the Permit by failing to keep the South haul road swept as necessary to achieve control of dust emissions.

Violation 5

44. Helena violated specific conditions 6(a) and 6(b) of the Permit and 20.2.72.213 NMAC by failing to conduct initial compliance tests of the applicable regulated units on or before May 2, 2006.

Violation 6

45. Helena violated general conditions 1(a)(v) and 2 of the Permit, 20.72.212.D NMAC, and 20.2.72.200.A(2) NMAC by failing to notify the Department of the new equipment being installed, as observed during the March 30 and April 17, 2007 inspections, and by failing to apply for a modification or revision to the Permit for the new equipment.

Violation 7

46. Helena violated specific condition 3(b) of the Permit by failing to continuously monitor the differential pressure in inches of water across the dust collection system at least on April 2 and 3, 2007.

Violation 8

47. Helena violated specific conditions 3(b) and 4(f) of the Permit by failing to record differential pressure in inches of water each day that the dust collection system was operated from November 5, 2005 through April 3, 2007.

Violation 9

48. Helena violated specific condition 3(a) by failing to conduct inspections of all building enclosures at least each quarter and specific condition 4(f) by failing to generate and maintain records of such inspections.

Violation 10

49. Helena violated specific condition 3(c) of the Permit by failing to observe visible emissions during operations of the 11 process units listed in Table 1.1 of the Permit using an EPA Reference Method 22 quarterly and specific condition 4(f) by failing to generate and record

such observations.

Violation 11

50. Helena violated specific condition 4(a) of the Permit by failing to general and maintain daily and annual production rates for each source of emissions having a limit.

COMPLIANCE ORDER

51. Section 74-2-12.A of the AQCA authorizes the Secretary to issue a compliance order requiring compliance immediately or within a specified time period for violation of the AQCA, regulations promulgated under the AQCA or a condition of a permit issued under the AQCA.

52. Helena shall comply with specific condition 1(g) of the Permit by enclosing openings of the building during the handling, processing and conveying of fertilizer products.

53. Helena shall take all appropriate corrective action to remedy violations 2 through 11.

CIVIL PENALTY

54. Section 74-2-12.B of the AQCA authorizes the Secretary to assess a civil penalty up to \$15,000.00 per day of noncompliance for each violation of the AQCA, regulations promulgated under the AQCA or a condition of a permit issued under the AQCA.

55. The Department assesses a penalty of \$279,076 (two hundred seventy-nine thousand, and seventy-six dollars) for violation of the AQCA, AQCR, and Permit. The Department assesses the following penalties for each violation:

Violation 1	\$ 33,960
Violation 2	\$ 25,200

Violation 3	\$ 0
Violation 4	\$ 5,400
Violation 5	\$ 33,960
Violation 6	\$ 37,356
Violation 7	\$ 12,000
Violation 8	\$ 29,600
Violation 9	\$ 36,000
Violation 10	\$ 36,000
Violation 11	\$ 29,600

The penalties were calculated in accordance with the Department's Air Quality Bureau Civil Penalty Policy (Oct. 20, 2005).

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

56. Pursuant to Section 74-2-12.C of the AQCA and the Department's Adjudicatory Procedures, 20.1.5.200 NMAC, Helena may request a hearing by filing a written request for a public hearing with the hearing clerk no later than thirty days from receipt of this Compliance Order. The Request for Hearing shall include an Answer:

a. Admitting or denying each alleged finding of fact. Any alleged finding of fact that is not specifically denied shall be deemed to be admitted. Helena may assert that it has insufficient knowledge of any alleged finding of fact, and such finding shall be deemed to be denied;

b. Asserting any affirmative defense upon which Helena intends to rely. Any affirmative defense not asserted in the Answer, except an affirmative defense asserting lack of subject matter jurisdiction, shall be deemed to be waived;

c. Signed under oath or affirmation that the information contained therein is true and correct to the best of the signatory's knowledge; and

d. Attaching a copy of this Compliance Order.

57. This Compliance Order shall become final upon Helena's receipt of the Compliance Order unless Helena files a Request for Hearing and Answer as set forth above.

Helena may file a Request for Hearing and Answer at the following address:

Hearing Clerk
New Mexico Environment Department
P.O. Box 26110
Santa Fe, New Mexico 87502-6110

58. The public hearing shall be governed by the Department's Adjudicatory Procedures, 20.1.5 NMAC (attached).

SETTLEMENT CONFERENCE

59. Helena may confer with the Department regarding settlement at any time, but a settlement conference or request for a settlement conference shall not extend or waive the deadline for filing a Request for Hearing or Answer. Helena may appear at a settlement conference *pro se* or through counsel. The Secretary or his designee shall execute any settlement as a Stipulated Final Order. A Stipulated Final Order shall resolve all issues raised in this Compliance Order, shall bind all parties to this Compliance Order, and shall not be appealable.

To confer regarding settlement, please contact:

Tannis L. Fox
Deputy General Counsel
Office of General Counsel
New Mexico Environment Department
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone: (505) 827-1603
Facsimile: (505) 827-1628

TERMINATION

60. This Compliance Order shall terminate upon certification by Helena that all requirements of the Compliance Order have been completed and the Department has approved such certification in writing, or upon the Secretary's approval of a Stipulated Final Order.

7/30/08
Date

Jim Norton / TLF
Jim Norton
Director
Environmental Protection Division